

Department of Community Planning and Economic Development
Appeal of the Decision of the Zoning Administrator
BZZ-5910

Date: March 21, 2013

Applicant: Eric H. Galatz, Leonard, Street and Deinard P.A. on behalf of Megabus USA, LLC

Address of Property: 247 Chicago Avenue

Project Name: Appeal of the determination of the Zoning Administrator

Contact Person and Phone: Eric H. Galatz, (612) 335-1509

CPED Staff and Phone: Jacob Steen, (612) 673-2264/Steve Poor (612) 673-5837

Date Application Deemed Complete: January 9, 2013

End of 60-Day Decision Period: March 9, 2013

End of 120-Day Decision Period: May 8, 2013 (*Staff sent the extension letter on February 6, 2013*)

Ward: 7 Neighborhood Organization: Downtown Minneapolis Neighborhood Association

Existing Zoning: B4N Downtown Neighborhood District, DP Downtown Parking Overlay District

Zoning Plate Number: 20

Legal Description: Not applicable for this application

Proposed Use: Principal parking facility (commercial parking lot) operating as a loading and unloading Bus Turnaround for Megabus passengers.

Appeal of the decision of the Zoning Administrator: Application by Eric H. Galatz, on behalf of Megabus USA, LLC, for an appeal of the Zoning Administrator's determination that the bus passenger loading and unloading at 247 Chicago Avenue is classified as a Bus Turnaround under the Minneapolis Code of Ordinances, thus requiring a conditional use permit (CUP).

§ 525.170. Appeals of decisions of the zoning administrator.

All findings and decisions of the zoning administrator, director of regulatory services, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals

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may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180

Background and Analysis: Megabus is an intercity bus carrier that operates in cities across the United States. Megabus patrons in Minneapolis purchase tickets online and passenger loading and unloading is conducted in the commercial surface parking lot located at 247 Chicago Avenue. The parking lot, which is a legal nonconforming use in the Downtown Parking Overlay District, was not designed specifically to accommodate passengers who are waiting for bus arrivals and departures. There is a sign indicating the location of the “bus stop,” but no shelter is provided for the waiting passengers. Portable bathroom facilities are located on the parking lot.

In the spring of 2012, zoning enforcement staff received multiple complaints related to Megabus passenger loading and unloading in the commercial parking lot located at 247 Chicago Avenue. Many of the complaints came from tenants at 901/903 Washington Avenue South, a multi-tenant commercial property immediately to the east of 247 Chicago Ave. Complaints include littering, loitering, excessive non-customer use of the bathrooms, and during hours that the building is not open to the public—use of the entry alcove as a bathroom. Many of these issues appear to be exacerbated by cold weather. On April 4, 2012, a zoning inspector investigated the complaint and wrote a violation notice stating that the “property may not be used for bus loading or unloading without a conditional use permit.” Shortly after the notice was issued, Mr. Galatz contacted city staff to begin a discussion regarding the necessary steps to bring the site into compliance as well as identify possible alternative locations for the Megabus operations. These discussions involved numerous meetings with staff from CPED, Business Licensing, Public Works, and the City Attorney’s office. While these discussions took place, zoning enforcement orders were temporarily stayed and staff received no new complaints about Megabus operations until early January 2013. In early January, Business Licensing staff received renewed complaints and forwarded them to Zoning Enforcement. The zoning inspector then issued a final warning letter stating that if the continued operations would require a conditional use permit to operate.

At the February 14, 2013 meeting of the Minneapolis Zoning Board of Adjustment, this item was continued two cycles to the March 21, 2013 hearing.

Existing Use: The Zoning Administrator has determined that the Megabus operations at 247 Chicago Avenue are classified as a “Bus Turnaround.” The use is located under the “Public Services and Utilities” sub-classification in Table 549-1 of the Minneapolis Code of Ordinances (MCO). A Bus Turnaround requires a Conditional Use Permit (CUP) and an application for Site Plan Review.

The term Bus Turnaround is not a defined term in the zoning ordinance. Typically, intercity bus carriers operate out of facilities designed and operated to accommodate passengers waiting for bus arrivals and departures. A prominent example in downtown Minneapolis is the Jefferson Lines/Greyhound depot at 950 Hawthorne Avenue. These facilities are classified as “Passenger Transit Stations” under the zoning ordinance. A Passenger Transit Station, while not defined under the ordinance, implies the existence of a physical structure or structures designed to accommodate the transit passengers.

The Megabus traffic patterns for arrivals and departures utilize the parking lot at 247 Chicago Avenue in conjunction with the right-of-way as a Bus Turnaround. Buses enter the parking lot along Chicago Avenue in the existing drive aisle and the bus stops approximately seventy-five (75) to one hundred (100) feet inside of the property to drop off and pick up passengers. Once passengers have unloaded and loaded, buses continue along the drive aisle to where Ninth Avenue South/Norm McGrew Place terminates at the east end of the commercial parking lot. From Ninth Avenue, buses proceed west on Third Street S. back to Chicago Avenue. (See attachment 3). The Zoning Administrator has determined that the use of the parking lot, in conjunction with the right of way, constitutes a use that is classified as a Bus Turnaround.

There is a sign to identify the “Megabus bus stop” in the parking lot where the buses pick up and drop off passengers; however, there is no further loading/unloading area designation and passengers stand throughout the parking lot waiting for arrivals.

Appeal: The appellant’s application for appeal was in response to the final warning letter issued on January 28, 2013, which stated that the “property may not be used for a bus turnaround without obtaining a conditional use permit.” (Attachment 4). The appellant’s appeal is twofold, asserting 1) the Zoning Administrator has incorrectly characterized the use as a bus turnaround, and 2) the Zoning Administrator does not have authority to regulate the behavior of individuals who may be Megabus passengers.

Bus Turnaround

The appellant contends that Megabus does not use the property for a Bus Turnaround. Rather, the appellant asserts that the property is used only “as a bus stop for loading and unloading passengers.” Because the Minneapolis Code of Ordinances does not provide a definition of Bus Turnaround, the appellant provides a definition that supports its assertion. (See Attachment 1, page 3–4). The appellant’s definition is taken from the development guidelines for the Pace bus service provider, a transit provider serving the suburbs of Chicago. The definition states “[b]us turnarounds are roadway facilities that expedite a bus’ return to the service route. These facilities can be used at the termini of routes to turn transit vehicles or they can be incorporated into a development’s design to allow transit service to operate onto the site.” This definition describes guidelines for a variety of bus turnaround designs that would be permitted by Pace Bus, a suburban transit provider. This definition is not exclusive and is not intended to capture every type of possible bus turnaround.

The appellant asserts that this definition, combined with classification under “Public Services and Utilities” implies that a Bus Turnaround can only be an element of the public street system.

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The fact that the use is classified under “Public Services and Utilities” does not preclude operation by a private entity or require operation on public property. As stated above, there is at least one existing privately operated transit station in Minneapolis, a use that is similarly classified under “Public Services and Utilities.”

Zoning Administrator’s Authority

The appellant contends that because the zoning enforcement actions were prompted by complaints of loitering the Zoning Administrator has no authority to act. One of the enumerated purposes of the zoning ordinance is “[t]o provide for the safe and efficient circulation of all modes of transportation, including transit, pedestrian and bicycle traffic, with particular regard to the avoidance of congestion in the streets and highways.” MCO § 520.30(8). Section 525.540 further states that “[t]he zoning administrator and the director of regulatory services shall have the authority to investigate any complaint alleging a violation of the zoning ordinance.” Thus, the enforcement of the requirement that Megabus obtain a conditional use permit for a Bus Turnaround is entirely within the authority of the Zoning Administrator.

Findings:

1. Megabus, an intercity bus carrier, utilizes the commercial parking lot located at 247 Chicago Avenue for the regular loading and unloading of passengers.
2. Megabus’ use of the parking lot, in conjunction with the right-of-way, is a Bus Turnaround
3. Pursuant to Table 549-1 of the Minneapolis Zoning Code, Megabus’ operation as a Bus Turnaround requires a Conditional Use Permit.
4. The enforcement of the requirement that Megabus obtain a conditional use permit for a Bus Turnaround is entirely within the authority of the Zoning Administrator.

RECOMMENDATIONS

Recommendation of the Department of Community Planning and Economic Development for the appeal of the decision of the zoning administrator:

The Department of Community Planning and Economic Development recommends that the Board of Adjustment adopt the above findings and **deny** the appeal of the Zoning Administrator’s determination that the bus passenger loading and unloading at 247 Chicago Avenue is classified as a Bus Turnaround under the Minneapolis Code of Ordinances, thus requiring a conditional use permit (CUP).

Attachments:

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- 1) Statement of reason for the appeal submitted by the appellant
- 2) Zoning map
- 3) Observed on-site traffic pattern
- 4) Zoning Violation Orders
- 5) Photos
- 6) Impact statement from adjacent property owner